



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-28602 September 29, 1970

UNIVERSITY OF THE PHILIPPINES, petitioner,

vs.

WALFRIDO DE LOS ANGELES, in his capacity as **JUDGE of the COURT OF FIRST INSTANCE IN QUEZON CITY**, et al., respondents.

Office of the Solicitor General Antonio P. Barredo, Solicitor Augusto M. Amores and Special Counsel Perfecto V. Fernandez for petitioner.

Norberto J. Quisumbing for private respondents.

REYES, J.B.L., J.:

Three (3) orders of the Court of First Instance of Rizal (Quezon City), issued in its Civil Case No. 9435, are sought to be annulled in this petition for certiorari and prohibition, filed by herein petitioner University of the Philippines (or UP) against the above-named respondent judge and the Associated Lumber Manufacturing Company, Inc. (or ALUMCO). The first order, dated 25 February 1966, enjoined UP from awarding logging rights over its timber concession (or Land Grant), situated at the Lubayat areas in the provinces of Laguna and Quezon; the second order, dated 14 January 1967, adjudged UP in contempt of court, and directed Sta. Clara Lumber Company, Inc. to refrain from exercising logging rights or conducting logging operations on the concession; and the third order, dated 12 December 1967, denied reconsideration of the order of contempt.

As prayed for in the petition, a writ of preliminary injunction against the enforcement or implementation of the three (3) questioned orders was issued by this Court, per its resolution on 9 February 1968.

The petition alleged the following:

That the above-mentioned Land Grant was segregated from the public domain and given as an endowment to UP, an institution of higher learning, to be operated and developed for the purpose of raising additional income for its support, pursuant to Act 3608;

That on or about 2 November 1960, UP and ALUMCO entered into a logging agreement under which the latter was granted exclusive authority, for a period starting from the date of the agreement to 31 December 1965, extendible for a further period of five (5) years by mutual agreement, to cut, collect and remove timber from the Land Grant, in consideration of payment to UP of royalties, forest fees, etc.; that ALUMCO cut and removed timber therefrom but, as of 8 December 1964, it had incurred an unpaid account of P219,362.94, which, despite repeated demands, it had failed to pay; that after it had received notice that UP would rescind or terminate the logging agreement, ALUMCO executed an instrument, entitled "Acknowledgment of Debt and Proposed Manner of Payments," dated 9 December 1964, which was approved by the president of UP, and which stipulated the following:

3. In the event that the payments called for in Nos. 1 and 2 of this paragraph are not sufficient to liquidate the foregoing indebtedness of the DEBTOR in favor of the CREDITOR, the balance outstanding after the said payments have been applied shall be paid by the DEBTOR in full no later than June 30, 1965;

xxx xxx xxx

5. In the event that the DEBTOR fails to comply with any of its promises or undertakings in this document, the DEBTOR agrees without reservation that the CREDITOR shall have the right and the power to consider the Logging Agreement dated December 2, 1960 as rescinded without the necessity of any judicial suit, and the CREDITOR shall be entitled as a matter of right to Fifty Thousand Pesos (P50,000.00) by way of and for liquidated damages;

ALUMCO continued its logging operations, but again incurred an unpaid account, for the period from 9 December 1964 to 15 July 1965, in the amount of P61,133.74, in addition to the indebtedness that it had previously acknowledged.

That on 19 July 1965, petitioner UP informed respondent ALUMCO that it had, as of that date, considered as rescinded and of no further legal effect the logging agreement that they had entered in 1960; and on 7 September 1965, UP filed a complaint against ALUMCO, which was docketed as Civil Case No. 9435 of the Court of First Instance of Rizal (Quezon City), for the collection or payment of the herein before stated sums of money and alleging the facts hereinbefore specified, together with other allegations; it prayed for and obtained an order, dated 30 September 1965, for preliminary attachment and preliminary injunction restraining ALUMCO from continuing its logging operations in the Land Grant.

That before the issuance of the aforesaid preliminary injunction UP had taken steps to have another concessionaire take over the logging operation, by advertising an invitation to bid; that bidding was conducted, and the concession was awarded to Sta. Clara Lumber Company, Inc.; the logging contract was signed on 16 February 1966.

That, meantime, ALUMCO had filed several motions to discharge the writs of attachment and preliminary injunction but were denied by the court;

That on 12 November 1965, ALUMCO filed a petition to enjoin petitioner University from conducting the bidding; on 27 November 1965, it filed a second petition for preliminary injunction; and, on 25 February 1966, respondent judge issued the first of the questioned orders, enjoining UP from awarding logging rights over the concession to any other party.

That UP received the order of 25 February 1966 after it had concluded its contract with Sta. Clara Lumber Company, Inc., and said company had started logging operations.

That, on motion dated 12 April 1966 by ALUMCO and one Jose Rico, the court, in an order dated 14 January 1967, declared petitioner UP in contempt of court and, in the same order, directed Sta. Clara Lumber Company, Inc., to refrain from exercising logging rights or conducting logging operations in the concession.

The UP moved for reconsideration of the aforesaid order, but the motion was denied on 12 December 1967.

Except that it denied knowledge of the purpose of the Land Grant, which purpose, anyway, is embodied in Act 3608 and, therefore, conclusively known, respondent ALUMCO did not deny the foregoing allegations in the petition. In its answer, respondent corrected itself by stating that the period of the logging agreement is five (5) years - not seven (7) years, as it had alleged in its second amended answer to the complaint in Civil Case No. 9435. It reiterated, however, its defenses in the court below, which maybe boiled down to: blaming its former general manager, Cesar Guy, in not turning over management of ALUMCO, thereby rendering it unable to pay the sum of P219,382.94; that it failed to pursue the manner of payments, as stipulated in the "Acknowledgment of Debt and Proposed Manner of Payments" because the logs that it had cut turned out to be rotten and could not be sold to Sta. Clara Lumber Company, Inc., under its contract "to buy and sell" with said firm, and which contract was referred and annexed to the "Acknowledgment of Debt and Proposed Manner of Payments"; that UP's unilateral rescission of the logging contract, without a court order, was invalid; that petitioner's supervisor refused to allow respondent to cut new logs unless the logs previously cut during the management of Cesar Guy be first sold; that respondent was permitted to cut logs in the middle of June 1965 but petitioner's supervisor stopped all logging operations on 15 July 1965; that it had made several offers to petitioner for respondent to resume logging operations but respondent received no reply.

The basic issue in this case is whether petitioner U.P. can treat its contract with ALUMCO rescinded, and may disregard the same before any judicial pronouncement to that effect. Respondent ALUMCO contended, and the lower court, in issuing the injunction order of 25 February 1966, apparently sustained it (although the order expresses no specific findings in this regard), that it is only after a final court decree declaring the contract rescinded for violation of its terms that U.P. could disregard ALUMCO's rights under the contract and treat the agreement as breached and of no force or effect.

We find that position untenable.

In the first place, UP and ALUMCO had expressly stipulated in the "Acknowledgment of Debt and Proposed Manner of Payments" that, upon default by the debtor ALUMCO, the creditor (UP) has "the right and the power to

consider, the Logging Agreement dated 2 December 1960 as rescinded without the necessity of any judicial suit." As to such special stipulation, and in connection with Article 1191 of the Civil Code, this Court stated in *Froilan vs. Pan Oriental Shipping Co., et al.*, L-11897, 31 October 1964, 12 SCRA 276:

there is nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention. In other words, it is not always necessary for the injured party to resort to court for rescission of the contract.

Of course, it must be understood that the act of party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it *proceeds at its own risk*. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203).

We see no conflict between this ruling and the previous jurisprudence of this Court invoked by respondent declaring that judicial action is necessary for the resolution of a reciprocal obligation,¹ since in every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription.

Fears have been expressed that a stipulation providing for a unilateral rescission in case of breach of contract may render nugatory the general rule requiring judicial action (v. Footnote, Padilla, Civil Law, Civil Code Anno., 1967 ed. Vol. IV, page 140) but, as already observed, in case of abuse or error by the rescinder the other party is not barred from questioning in court such abuse or error, the practical effect of the stipulation being merely to transfer to the defaulter the initiative of instituting suit, instead of the rescinder.

In fact, even without express provision conferring the power of cancellation upon one contracting party, the Supreme Court of Spain, in construing the effect of Article 1124 of the Spanish Civil Code (of which Article 1191 of our own Civil Code is practically a reproduction), has repeatedly held that, a resolution of reciprocal or synallagmatic contracts may be made extrajudicially unless successfully impugned in court.

El artículo 1124 del Código Civil establece la facultad de resolver las obligaciones reciprocas para el caso de que uno de los obligados no cumpliera lo que le incumbe, *facultad que, segun jurisprudencia de este Tribunal, surge inmediatamente* despuesque la otra parte incumplio su deber, *sin necesidad de una declaracion previa de los Tribunales*. (Sent. of the Tr. Sup. of Spain, of 10 April 1929; 106 Jur. Civ. 897).

Segun *reiterada doctrina* de esta Sala, el Art. 1124 regula la resolucio como una "facultad" atribuida a la parte perjudicada por el incumplimiento del contrato, la cual tiene derecho do opcion entre exigir el cumplimiento o la resolucio de lo convenido, *que puede ejercitarse*, ya en la via judicial, *ya fuera de ella, por declaracion del acreedor*, a reserva, claro es, que si la declaracion de resolucio hecha por una de las partes se impugna por la otra, queda aquella sometida el examen y sancio de los Tribunales, que habran de declarar, en definitiva, bien hecha la resolucio o por el contrario, no ajustada a Derecho. (Sent. TS of Spain, 16 November 1956; Jurisp. Aranzadi, 3, 447).

La resolucio de los contratos sinalagmaticos, fundada en el incumplimiento por una de las partes de su respectiva prestacion, pueden tener lugar con eficacia" 1. o Por la declaracion de voluntad de la otra hecha extraprocesalmente, si no es impugnada en juicio luego con exito. y 2. o Por la demanda de la perjudicada, cuando no opta por el cumplimiento con la indemnizacion de danos y perjuicios realmente causados, siempre que se acredite, ademas, una actitud o conducta persistente y rebelde de la adversa o la satisfaccion de lo pactado, a un hecho obstativo que de un modo absoluto, definitivo o irreformable lo impida, segun el art. 1.124, interpretado por la jurisprudencia de esta Sala, contenida en las Ss. de 12 mayo 1955 y 16 Nov. 1956, entre otras, inspiradas por el principio del Derecho intermedio, recogido del Canonico, por el cual *fraganti fides, fides non est servanda*. (Ss. de 4 Nov. 1958 y 22 Jun. 1959.) (Emphasis supplied).

In the light of the foregoing principles, and considering that the complaint of petitioner University made out a *prima facie* case of breach of contract and defaults in payment by respondent ALUMCO, to the extent that the court below issued a writ of preliminary injunction stopping ALUMCO's logging operations, and repeatedly denied

its motions to lift the injunction; that it is not denied that the respondent company had profited from its operations previous to the agreement of 5 December 1964 ("Acknowledgment of Debt and Proposed Manner of Payment"); that the excuses offered in the second amended answer, such as the misconduct of its former manager Cesar Guy, and the rotten condition of the logs in private respondent's pond, which said respondent was in a better position to know when it executed the acknowledgment of indebtedness, do not constitute on their face sufficient excuse for non-payment; and considering that whatever prejudice may be suffered by respondent ALUMCO is susceptibility of compensation in damages, it becomes plain that the acts of the court a quo in enjoining petitioner's measures to protect its interest without first receiving evidence on the issues tendered by the parties, and in subsequently refusing to dissolve the injunction, were in grave abuse of discretion, correctible by certiorari, since appeal was not available or adequate. Such injunction, therefore, must be set aside.

For the reason that the order finding the petitioner UP in contempt of court has open appealed to the Court of Appeals, and the case is pending therein, this Court abstains from making any pronouncement thereon.

WHEREFORE, the writ of *certiorari* applied for is granted, and the order of the respondent court of 25 February 1966, granting the Associated Lumber Company's petition for injunction, is hereby set aside. Let the records be remanded for further proceedings conformably to this opinion.

Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor and Makasiar, JJ., concur.

Reyes, J.B.L., Actg. C.J., is on leave.

Footnotes

1 Ocejó Perez & Co. vs. International Banking Corp., 37 Phil. 631; Republic vs. Hospital de San Juan de Dios, et al., 84 Phil. 820.